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Division of Occupational Safety and Health
California Department of Industrial Relations
1515 Clay Street
Oakland, CA 94612

RE: 24 October 2018 Revised Draft for §3343 Workplace Violence Prevention in All Industries

Dear Mr. Graulich:

The Phylmar Regulatory Roundtable – OSH Forum (PRR) appreciates this opportunity to provide comments on DOSH's 24 October 2018 draft proposal for Workplace Violence in All Industries. PRR is a group of 38 companies and utilities; 15 of the members rank among the Fortune 500. Combined, PRR members employ more than 847,000 individuals in the U.S. and have annual revenues of more than \$937 billion. PRR members are committed to improving workplace safety and health. Toward that end, PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, participating entities work together in the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements.

PRR thanks the Division of Occupational Safety and Health (DOSH) for considering our two previous sets of recommendations submitted in January and March of 2018 and for incorporating some of them into its revised draft proposal. PRR appreciates DOSH's hard work on this complicated and challenging issue, including the collaborative process with stakeholders through an advisory committee.

These comments were developed from PRR member experiences and expertise in developing and implementing workplace violence prevention programs. These programs have evolved over the years, and member guidance forms the basis of these comments. In addition, PRR had the benefit of expertise provided by renowned forensic psychiatrist [Dr. Park Dietz](#) developing these comments and recommendations. Nevertheless, the opinions expressed below are those of PRR, and may differ from beliefs and comments of individual PRR members and Dr. Dietz. PRR's long-held belief is that workplace violence hazards are among those hazards that are covered by Section 3203, Injury and Illness Prevention Program (IIPP) and should have been identified and addressed in an employer's IIPP if they are present in a workplace. However, some employers have not done so.

PRR supports the performance-oriented approach of the draft rule, crucial given that the rule will cover nearly *all* employers in the State with highly diverse work environments. A specification approach would not be workable due to many variables, and the draft (with some necessary revisions) provides employers the flexibility to address hazards, while assuring that workers are protected from violence reasonably anticipated to occur at their workplaces. PRR shares Cal/OSHA's goal of improving workplace safety and health and offers these comments with the intention of achieving that goal without unnecessary disruption to current workplace security programs or to business operations.

The most critical issues PRR members have are related to privacy concerns for the reporting employee, workplace violence victim, or witness. Employers go to great lengths to assure that the identities of these persons are protected from the perpetrator of the threat or violent behavior. PRR is adamant that an effective Workplace Violence Prevention Program must include protections for the victim, witness, or reporting employee and request that DOSH consider this throughout the development of this standard.

PRR comments and recommendations are listed under the appropriate sections as identified in the 24 October 2018 draft. Any revised and/or additional content PRR recommends is in **bold**; recommendations for revision are in ~~strikethrough~~. We offer the following comments and recommendations for your consideration:

A. Comments on Subsection for (b) Definitions

PRR members support the definitions of chief, division, injury, and union representative. We urge DOSH to accept the following suggestions for definitions of the terms "threat of violence" and "workplace violence." We also strongly advise that DOSH include definitions of the following terms: "environmental risk factors", "Personally Identifiable Information" (PII), "Sensitive Personally Identifiable Information" (SPII), and "workplace violence incident." Finally, PRR recommends including a reference to "medical treatment" and "first aid" as defined by Federal OSHA in 29 CFR 1904 and by Cal/OSHA in Section 14300.7.

1) Recommendations for definition of "Threat of violence"

CONCERN: There are PRR members who have had workplace security programs in place for decades. We continue to advocate that DOSH reconsider the definition of "threat of violence" to provide additional clarity and to recognize language that has been used in the workplace security arena for some time. Many employers have evolved their programs and definitions to more broadly define the term to include precursors to threats. We believe that these employers should not be required to revise programs to make them less effective.

Recommended language:

As we previously commented, PRR suggests that DOSH align its definition of "threat of violence" with the ANSI standard, ASIS/SHRM, [WVPI. 1-2011](#) entitled "Workplace Violence Prevention and Intervention." The definition of "threat" in that document is:

“Any verbal or physical conduct that conveys an intent or is reasonably perceived to convey an intent to cause physical harm or place someone in fear of physical harm.”

PRR Suggested NOTE: Employers with existing programs may include in their Plan an alternate definition of “threat of violence” that meets the intention of preventing workplace violence incidents.

Rationale for Recommendation:

1. PRR understands DOSH’s desire to make the definitions of terms in this rule consistent with those in the regulation for Workplace Violence Prevention in Healthcare ([Section 3342](#)). However, the standard currently drafted is for industries outside of healthcare; PRR believes that alignment will only conflict with and complicate programs that employers have already established. PRR members (and other non-healthcare employers) established and implemented workplace security programs years ago and many used the 2011 ANSI standard as either: (a) a model when formalizing their programs; or (b) a basis for updating them. Members believe that requiring revision of existing effective programs to change a definition that will not clarify an existing term but will require retraining, does not provide any benefit to worker safety or security.
2. The workplace risks, hazards, and needs of industries and types of operations vary widely. PRR suggests that DOSH include definitions that are relevant to various individual companies and do not restrict employers particularly when they already have existing effective programs that use an alternate definition. For example, as Dr. Dietz’s experience tells us, “workplace hazards that employees in the healthcare and retail fields experience are vastly different from the hazards in other private sectors. Specifically, healthcare employees are at risk from patients and those attending to patients (e.g., family members) and retail employees are subject to risks associated with customers. Employees in industries such as finance and manufacturing tend to experience incidents that stem from fellow employees and domestic partners of employees.” Industries outside healthcare and the scope of 3342 should have the flexibility to develop definitions that support their specific Plans and that their experience has shown protect their employees.
3. A list of individuals who developed the ANSI Standard appears in the Introduction to the Standard. These individuals work full time in Security and Human Resources professions, and they have had the most relevant experience in handling workplace violence incidents. In addition, one of the organizations responsible for developing the ANSI standard was ASIS International (formerly the American Society for Industrial Security, founded in 1955, which changed its name in 2002 to become more global in nature), is the “preeminent organization for security professionals with 37,000 members worldwide.” These professionals, after considerable debate, believed that the definition as written in their standard was the most appropriate for the purpose of workplace violence programs, and

PRR respectfully recommends that DOSH accept the work previously done by these experts.

4. PRR believes that the overall goal is to identify appropriate threats of violence in order to respond in a prudent manner to protect employees. The current draft language could leave some behaviors to interpretation. The ANSI language identifies the key elements of conveying intent, or the reasonable perception of intent, to cause harm. The draft regulatory language discusses “reasonable possibility” rather than the “reasonable perception” language in the ANSI standard. PRR members believe that the ANSI definition has more clarity than the language in the draft’s definition of “threat of violence,” which concludes with the phrase “and that serves no legitimate purpose.”
5. On the other hand, the Workplace Violence Prevention Programs for many employers have evolved over time, and some of them do not use the ANSI definition either. Their experience has shown that “threats are such late-stage indicators of employee misconduct that by the time they arise, the subject making the threats has already caused a host of problems. . . and is a level of danger that never should have arisen. Untrained or poorly trained managers allow misconduct to escalate to the threat stage before informing anyone who knows how to solve the problem. One cannot effectively prevent losses and injuries due to workplace misconduct by waiting until there is a ‘threat of violence’ under any definition...” “The key is that policies need to provide the employer with the flexibility to investigate alleged threats and take appropriate actions to reduce all risks, including the risk of violence toward others implied by the verbal threat, the risk of retaliation against witnesses, the risk of suicide, and many others that are not as obvious.” [Dr. Park Dietz.] PRR strongly cautions DOSH against including requirements that will require employers to go backwards in effective management of workplace risks.
6. The U.S. Department of Labor, in its [Workplace Violence Prevention Program](#) uses the concept of “intent” in its definition of “threat” as follows:

***Threat:** Any oral or written expression or gesture that could be interpreted by a reasonable person as conveying an intent to cause physical harm to persons or property. Statements such as, "I'll get him," or "She won't get away with this" could be examples of threatening expressions depending on the facts and circumstances involved.*

7. Also to be considered is that many security experts use definitions included in Penal Codes. For example, the legal definition of a “criminal threat” from the California Penal Code Section [422](#) makes it a crime to threaten another person with immediate harm when you intend to, and in fact do, cause reasonable and sustained fear in that individual. The California Penal Code states as follows:

*422 (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, **with the specific intent** that the statement, made verbally, in writing, or by means of an*

electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

A detailed explanation with definitions, cases, and analysis of “threat” in the criminal context may be found [here](#). Although we do not suggest that all workplace violence threats are criminal in nature, many are, and the case law on the topic may be of interest as background. Additionally, one PRR member developed a [paper](#) for their own use which may be of interest.

8. As mentioned above, for employers who have already implemented workplace security programs, there is little benefit to requiring rewriting the plan, revising training programs, and re-training employees on a definition that provides less clarity than either the ANSI standard that has been used since 2011 or a definition an employer has refined based on experience implementing its Workplace Violence Prevention Program.

2) Recommendations for definition of “Workplace violence”

CONCERN 1: PRR members are concerned that there are workplace violence incidents that have occurred while the employee is engaged in work-related activities that do not happen at the actual worksite or “place of employment.” For example, incidents may occur while employees are traveling for business or attending off-site events and parties. Members believe DOSH should expand the scope of the definition to address these situations. In addition, PRR supports the deletion of “at the worksite” in the definition of “workplace violence” but recommends language to further clarify the scope.

Recommended Language:

*“Workplace violence” means any act of violence or threat of violence that **arises out of employment or occurs when an employee is performing work related activities.** ~~in a place of employment.~~*

Rationale for Recommendation:

1. PRR members have mobile work forces that do not perform their work duties at a specific location. Using PRR’s recommended language would clarify that these mobile work groups are included in the scope as well.

2. Dr. Park Dietz, through his extensive experience working with companies and security teams in developing and implementing workplace violence prevention plans and policies, states that “good workplace violence policies address any misconduct affecting the business, regardless of the location or medium of communication. For example, stalking, threats, and intimate partner abuse is often conveyed by email, texts, and social media.”

CONCERN 2: PRR recognizes DOSH’s intent to make the definitions of terms in the draft rule consistent with those in the regulation for Workplace Violence Prevention in Healthcare (Section 3342). However, we believe that for clarity, DOSH should delete the inclusion of “inmates” in the description of Type 2 violence ((C)(2).

Recommended Language:

2. “Type 2 violence” means workplace violence directed at employees by customers, clients, patients, students, ~~inmates~~, or visitors.

Rationale for Recommendation:

As outlined in EXCEPTION 4 of subsection (a) of this standard, California Department of Corrections and Rehabilitation facilities are subject to title 8, section 3203; therefore, violence perpetrated by “inmates” should not be included in the definition of Type 2 violence in this standard (3343) because it is not relevant.

CONCERN 3: PRR members are concerned that the definition is not broad enough to address situations in which someone may have a “legitimate business at the worksite” but still behaves violently. In addition, the current definition of Type 4 violence does not include mobile workers. PRR therefore suggests revising the definition of Type 1 and Type 4 violence to clarify the intent of the regulation.

Recommended Language:

1. “Type 1 violence” means workplace violence committed by a person, who ~~is unrelated to the business functions, at the place of employment~~ ~~has no legitimate business at the worksite~~

AND

4. “Type 4 violence” means workplace violence committed in the ~~workplace~~ ~~place of employment~~ ~~or arises out of employment...~~

Rationale for Recommendation:

1. PRR agrees with DOSH’s intent to revise the definition of “workplace violence” (replacing “at the work site” with “in a place of employment”) and recommends that it be broadened to include incidents that occur away from the workplace but

arise out of the employment. We believe that revising the definitions of Type 1 and Type 2 violence as above will better align with general industry and provide clarity and consistency in the document.

2. PRR members understand that the original intent of the definition of “Type 1 violence” was to protect retail establishments and healthcare operations who experience threats from the public and we agree with this. Members believe, however, that the language “no legitimate business” is not accurate and should be revised. For example, a person may enter a place of business with a legitimate purpose (e.g., to cash a check, purchase a soda) and end up committing an act of violence, so they are arguably there for a “legitimate purpose.” PRR also understands that the “Type of violence” definitions align with 3342 and we would normally support alignment with established standards, however, we believe that DOSH should take this opportunity to clarify such a significant term.
3. Finally, the definition of Type 4 violence should be expanded to include mobile workers who are victims when they are not in a “workplace,” but are still at their “place of employment” or performing work-related duties.

3) **Definition of Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII)**

CONCERN: PRR appreciates the inclusion of our previously suggested definition of PII in the draft requirement for a Violent Incident Log; however, we believe that to streamline the document and make subsection (d) less cumbersome, the definition of PII should be in subsection (b) definitions (as stated above), and only referenced as PII in subsection (b). Further, workplace violence incident reports contain highly personal and sensitive information that should not be made available to other employees upon request (e.g., sexual assault, domestic violence issues). PRR members are concerned that Sensitive Personally Identifiable Information (SPII) is not protected from release in the draft, and believes it should be. PRR members are also very concerned that if employees believe that sensitive information on the Log will be made available to other employees, they may not report incidents. This is not a desired outcome.

Recommended Language:

(b) Definitions

“Personally Identifiable Information (PII)” – means any information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity.

“Sensitive Personally Identifiable Information (SPII)” — means personally identifiable information, which if lost, compromised, or disclosed without

authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

AND

*(d) **Violent Incident Log.** The employer shall record information...The employer shall omit any element of **PII or SPII** ~~element of personal identifying information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity.~~ **from the log.***

Rationale for Recommendation:

1. Relocating the definition of PII to the definitions subsection of the standard will make it easier to follow, and, as stated above, will streamline and simplify the document.
2. Violent incidents, by nature, represent some of the most private type of events that can occur in connection to an individual's employment, especially when they involve domestic violence situations or any type of sexual assault. Also, incidents that involve co-workers may cause embarrassment when and if other employees are aware of the details. PRR member experience is that situations involving domestic violence, sexual assault, and co-worker confrontations are not uncommon and believe that the protection of employee privacy is essential, and protecting employee PII is important. Equally significant is that DOSH acknowledge and define SPII because the information being collected, analyzed, and documented in workplace violence situations, if lost, compromised, or disclosed could absolutely result in substantial harm, embarrassment, inconvenience, or unfairness to the employee involved. For these reasons, PRR urges that DOSH address SPII in the regulation.
3. PRR suggests the definition above as it is from the U.S. Department of Homeland Security's (DHS) definition of SPII in its: [Handbook for Safeguarding Sensitive Personally Identifiable Information](#). In addition, multiple government agencies are already addressing proper handling of SPII in their privacy protocols and PRR recommends that DOSH do so as well.
4. Privacy concerns and the protection of an individual's privacy continue to be a focal point among many groups: public, private, federal and state. PRR members continually handle employee data that needs to be protected and are diligent about doing so. Because of this, members believe it is imperative that DOSH consider more thoroughly the protection of employee privacy in the development of this standard and support employers being proactive in protecting employee privacy as well.

4) Definition of "Environmental Risk Factors"

CONCERN: PRR members are concerned that non-healthcare employers in General Industry may not be familiar with “environmental risk factors” in the context of workplace violence. A definition of this term is necessary would provide clarity and recommend that DOSH include one because the term is used in the draft regulation.

Recommended Language:

“Environmental risk factors” means factors in the facility or work area that may contribute to the likelihood or severity of a workplace violence incident. Environmental risk factors include those associated with the specific task being performed, (e.g., collection of money), structural elements (e.g., lack of physical barriers, inability to lock doors, inadequate escape routes), and social environment (e.g., inadequate supervision, work cultures that tolerate abusive language, teasing, discrimination).

NOTE TO DOSH: Second sentence (above) recommended by Dr. Park Dietz.

NOTE: Environmental risk factors will vary based on the employer, type of industry or service provided, and physical work environment; the above factors are not all-encompassing, and employers must identify and evaluate potential workplace risks and hazards when developing their prevention programs.

Rationale for Recommendation:

We believe that this term and its definition are needed to help ensure that employers and employees understand what should be considered as an environmental risk factor when developing and managing an effective Workplace Violence Prevention Plan. Employers with existing Workplace Violence Prevention Programs are aware of the importance of environmental risk factors and have already taken them into consideration in the development of their programs. Employers and employees need to be aware of environmental risk factors to help them prevent violent incidents from occurring and we believe that including a definition in alignment with the definition in 3342 will support these goals.

5) Reference to “medical treatment” and “first aid”

CONCERN: Currently, the draft of subsection (d)(4)(A) requires employers to document whether medical treatment was provided to the employee. However, there may be some ambiguity for some employers as to what qualifies as medical treatment. PRR believes that this term should be removed from subsection (d) as recommended below. However, should DOSH maintain this requirement, PRR members believe that a reference to Section [14300.7\(b\)\(5\)\(A\)](#), to include the definition of “first aid” in 14300.7(b)(5)(B) will provide clarity.

Recommended Language:

“medical treatment” as defined by Section 14300(b)(5)(A), including the definition of “first aid” in Section 14300.7(b)(5)(B).

Rationale for Recommendation:

PRR members believe that for completeness, DOSH should reference the definitions for “medical treatment” and “first aid” included in its regulations at California Section 14300 to alleviate potential confusion when completing the Log and in communication with compliance officers. Employers in all industries are already familiar with OSHA’s recordkeeping requirements in 29 CFR 1904 and California Section 14300.

6) Definition of “workplace violence incident”

CONCERN: Currently, the only place the standard addresses a “workplace violence incident” is in subsection (d)(3)(A)-(F) where it lists the “nature of the incident.” PRR members are concerned that clarity is needed on what “an incident” is in the context of workplace violence, and believe that this term should be clarified where other terms are defined, subsection (b) definitions. In addition, members are confused by (d)(E): Animal attack. In some cases, an animal attack may be considered workplace violence (e.g., customer trains attack dog to attack meter reader). However, many animal attacks in the work environment are simply workplace injuries and should be managed as such (e.g., rattlesnake bite in the field). In addition, PRR members have expressed confusion in understanding how (d)(3)(A) and (d)(3)(B) differ. We recommend the following:

Recommended Language:

“Workplace Violence Incident” means that the nature of the incident or threat involved is a:

(A) Physical attack, including biting, choking, grabbing, hair pulling, kicking, punching, slapping, pushing, pulling, scratching, or spitting;

*(B) **Physical** attack with a weapon, object, **or animal**, including a gun, knife, or other object;*

(C) Threat of physical force or threat of the use of a weapon or other object;

(D) Sexual assault or threat, including rape/attempted rape, physical display, or unwanted verbal/physical sexual contact; or

(E) Other.

~~*(E) Animal attack*~~

Rationale for Recommendation:

1. Moving the information listed in (d)(3)(A)-(F) that defines the “nature of the incident” to subsection (b) definitions, aligns with the format DOSH took in (d)(2) when referencing workplace violence types. This will help clarify for the employer what constitutes a workplace violence incident.
2. PRR members agree that there are cases of individuals using animals to purposely injure individuals and these types of incidents should be addressed in this standard as workplace violence. However, PRR members believe that it is inappropriate for ALL animal attacks to be treated as workplace violence and recommends that subsection (d) be revised.
3. Members believe that an attack with a weapon or object, as described in (B), qualifies as a *physical* attack as defined in (A), and recommend that the language in the document should be consistent.

B. Comments on Subsection (c) Workplace Violence Prevention Plan

PRR members appreciate and agree with the revision that clarifies that an employers’ Workplace Violence Prevention Plan may be incorporated as part of the written Injury and Illness Prevention Program (IIPP) or maintained as a separate document. Regarding the added sections and remaining requirements of subsection (c), PRR has the following recommendations.

1) Recommendations for (C) Workplace Violence Prevention Plan

OVERARCHING CONCERN: PRR believes that taking a proactive approach to mitigate workplace violence acts by addressing “incidents” and “hazards” is key to a successful Workplace Violence Prevention Plan. However, we do not believe that the standard embraces this approach and is too focused on how employers should react after a situation has already occurred which unfortunately can be too late. For example, guidance from DHS suggests a proactive approach to mitigating risk by identifying the [pathway to violence](#). Experts agree that in most cases, perpetrators exhibited identifiable signs and observable behaviors prior to committing many of the nation’s devastating workplace violence tragedies. Regrettably, many of these signs were not reported or investigated. PRR believes that these signs and symptoms are within the scope of what DOSH is referring to as “hazards” in the standard; however, we are concerned that it will not be clear to all employers. We therefore suggest that DOSH encourage employers to take a proactive approach to develop a [“see something say something”](#) culture. PRR believes that encouraging employees to identify suspicious behavior will help mitigate risk and is the key to *prevent* workplace violence and tragedy. PRR recommends that in order to promote and support employers in developing effective Workplace Violence Prevention Plans, this standard should also focus on behavior that can lead to workplace violence.

CONCERN 2: PRR members are concerned that the language in (c)(2) is vague and request revisions to text in subsection (c) and (c)(2) in order to provide clarity. In addition, while members agree that employee involvement is beneficial in building an

effective Plan, they cannot compel uninterested employees to “actively” participate in such activities. PRR members, particularly in unorganized operations, are concerned that it may be that it may be impossible for them to comply; they can encourage or urge employees to participate, but cannot force them.

Recommended Language:

*The employer shall establish, implement, and maintain an effective workplace violence prevention plan (Plan). The Plan shall **be developed in consultation with employees and/or union representatives and shall include solicitation of their thoughts on identifying, evaluating and correcting workplace violence hazards.** The plan shall be in writing and shall be available to employees. ~~at all times.~~ The written Plan may be incorporated into the written Injury and Illness Prevention Program (IIPP) required by title 8, section 3203 or maintained as a separate document, and shall include all of the following elements:*

(1) Names or job titles...

*(2) ~~Effective~~ Procedures **for the consultation with** ~~to obtain the active involvement of~~ employees and their union representatives in developing and implementing the Plan, including **involving employees and their union representatives in** ~~their participation in~~ identifying, evaluating, and correcting workplace violence hazards; designing and implementing training; and reporting and investigating workplace violence incidents.*

Rationale for Recommendation

1. PRR members believe that the language used in this standard should align with other regulations such as those for Process Safety Management (PSM) requiring companies to “consult” with employees and employee representatives in developing and implementing the Plan.
2. PRR members suggest deleting the phrase that the Plan must be available “at all times” because it is not reasonable. The Plan should be accessible either at the workplace, or for workers in the field, at a hub they have access to during normal business hours. Alternatively, PRR would support a requirement that it be available within seven (7) days of the request, as with the OSHA 300 Log.
3. PRR believes that employees have valuable information to contribute to the development, implementation, and maintenance of a Workplace Violence Prevention Plan. However, PRR members have experienced situations in which they have tried to involve employees in joint labor-management endeavors, but the employees simply do not want to participate. For example, some employers with State-mandated joint labor-management safety and health committees have challenges influencing employees to participate. Including the requirement that procedures for employee involvement need to

be “effective” implies that when employees are given the opportunity to contribute and do not, the employer’s procedures would be considered ineffective. PRR members believe that this is not the intent of the requirement.

CONCERN 3: PRR members have expressed concern about injecting a new term: “fear of reprisal” in section (c)(6)(A) and recommend revising the section to include language to refer to the retaliation and discrimination provisions from Labor Code [6310](#).

Recommended Language:

*(c)(6)(A) How an employee can report a violent incident, threat, or other workplace concern **without being subject to retaliation or discrimination, as defined in Labor Code Section 6310** ~~fear of reprisal.~~*

Rationale for Recommendation:

The Occupational Health and Safety Labor Code 6310 currently protects employees from discrimination and retaliation for reporting workplace injuries and illnesses (see references below). All employees, including those covered by Workplace Violence Prevention Plans, fall under these protections, and members believe that introducing the new term (fear of reprisal) may result in confusion among employees and employers and could imply that 6310 does not apply to employees under the Workplace Violence Prevention in All Industries regulation.

6310

(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records

CONCERN 4: As previously mentioned, PRR members with existing effective Plans should not be required to “re-invent the wheel” and perhaps make changes that may lessen the effectiveness of their programs or cause unnecessary or potentially confusing training. PRR believes the standard should support a proactive approach to workplace violence prevention. To help address this, PRR suggests an additional requirement to subsection (c) Workplace Violence Prevention Plan that will assist employers in developing and maintaining active, effective Plans:

Recommended Language:

*(_) **Identified hazards, threats and pre-cursors to workplace violence incidents including corrective actions and procedures to follow to mitigate these types of situations.***

Rationale for Recommendation:

We agree that all employers should have policies and procedures to address these types of hazards and that all programs should focus on prevention of workplace violence. However, we also believe that employers need to have flexibility when operating and developing their Plans. This includes being able to address the unique risks associated with the line of business, as well as situations and issues that may contribute to and/or lead to Type 3 and Type 4 workplace violence incidents. Employees should be provided with tools and resources to handle these situations. Simply put, employees and managers need to address bad behavior before it escalates, and employers should have Plans that support this.

C. Comments on Subsection (d) Violent Incident Log

1) Recommendations for (d)

CONCERN 1: PRR is concerned that employers may not document workplace violence incidents that perhaps should be included if they do not consider the incident “violent.” As stated above, in most cases, perpetrators often exhibit aggressive behavior long before actual physical violence occurs.

PRR believes that revising the name of the “Log” will clarify application of when to use the Log.

Recommended Language:

(d) *Workplace Violence ~~Violent~~ Incident Log*

Rationale for Recommendation:

1. The term “violent” has not been used, nor defined in the draft regulation; we believe using it as the title of the required Log lacks consistency and PRR is concerned it will cause confusion among employers when determining what a “violent” incident is and when to use this Log.
2. Limiting documentation to “*violent* incidents” is not a pro-active approach to mitigating workplace violence risks. Once an act is violent, employees are no longer protected. PRR believes that in order to protect employees, employers must have a process in place that addresses behaviors and incidents that could *lead* to violent acts. The process is necessary, whether or not the regulation calls for it.

CONCERN 2: PRR members are concerned that it is not clear when employers are required to use the Log to document workplace violence incidents. In addition, they are concerned with the requirement to complete a Log entry about “every incident and post-incident response and investigation performed in accordance with subsection (c)(11).” Particularly for Types (3) and (4) violence, the investigation often leads to a personnel action which is confidential.

Recommended Language:

(c)(11) Procedures for *workplace violence threats* and post-incident response ~~and investigation.~~

(c)(12) Procedures for investigations of *workplace violence threats, incidents and post-incident response.*

(d) *Workplace Violence* ~~Violent~~ Incident Log. The employer shall record information in *a workplace violence* ~~violent~~ incident log about *workplace violence threats, and every incidents and post-incident response that meet the definition of workplace violence in this standard,* ~~investigation performed~~ in accordance with subsection (c)(11).

Rationale for Recommendation:

1. Since the language in (d) includes “investigations” to be documented in the required Log, members remain concerned about risks to employee privacy. PRR members believe that workplace violence *investigations* should be documented for analysis, tracking, and pro-active prevention; however, to protect the privacy of employees involved, including witnesses, details and witness accounts from the investigation should not be made available to employees or employee representatives. As Dr. Park Dietz explains: “Employers may open case files and launch investigations on any case of a suspected policy violation, employee fear or concern, or alleged danger. These cases include not only injurious and other threatening incidents, but also include true and false allegations, misunderstandings, misinterpretations, ambiguous language, and a host of unwanted behaviors that are neither threats nor violence.” In these situations, especially if claims of workplace violence are untrue or misconstrued, sharing details of these accounts with employees as required in (e)(6) of this standard may not only violate an employee’s SPII, but may put them at risk for retaliation and subject them to harm. Additionally, PRR believes that if employees are aware of the potential for information disclosure and fear retaliation or harm (from coworkers) after reporting, that will deter them from reporting and will negatively impact an effective Workplace Violence Prevention program. For these reasons, PRR believes that these documents should be for internal company and regulatory agency use only. However, if DOSH insists a Log be made available to employees, PRR requests that the Log be sanitized and not place employees at risk or deter them from reporting suspected or actual workplace violence incidents. Please see PRR’s recommendations for the Log below.
2. PRR believes that adding the language “*that meet the definition of workplace violence in this standard*” to (d) will provide needed clarity to employers on the types of incidents to document on the required Log, in addition to supporting the intent of the standard to provide transparency.

2) Recommendations for a Workplace Violence Incident Log (subsection (d)(1)-(5))

OVERARCHING CONCERN: Again, PRR's biggest concerns and ultimate goal for the development of this standard is to protect the privacy and safety of employees involved in workplace violence incidents and to prevent incidents from occurring by supporting employers in developing effective *prevention* Plans. PRR is aware that DOSH staff also understands the privacy concern of sharing investigation reports with employees and their representatives and appreciates limiting the language in (f)(6) to be applicable to (f)(1), (2), and (3) only (which does not include investigations). However, PRR members continue to be concerned about making the Log available to employees and their representatives, particularly for Type 3 and Type 4 incidents, for several reasons detailed below.

Overall, PRR members are unwavering in their conviction to restrict access to the Log for Type 3 and Type 4 violence to Federal and State authorities (e.g., Cal/OSHA and the California Department of Justice), for inspection and investigative purposes and that they should NOT release it to employees and representatives as directed in (f)(6). In order to balance the transparency goal with the protection of employee safety and privacy, PRR suggests a Log with the following provisions and changes, as listed below in (a)-(1). To clarify PRR's recommendations, make clear the information that is required on the log to employers, and most importantly, to protect the privacy and safety of employees, PRR has created a recommended Log for DOSH to incorporate into the standard (see attached).

PRR also recommends that DOSH consider another option: allow employers to make aggregate information available to employees and their representatives, rather than information on specific incidents.

Summary of Recommended Changes and Language for a Workplace Incident Log:

- a. Remove (d)(1) from the information recorded in the Log: *Date, time, and specific location of incident*
- b. Remove (d)(3)(A)-(F): *Nature of the incident...*
- c. Remove (d)(4)(A) from the information recorded in the Log: *Whether medical treatment was provided to the employee*
- d. Remove (d)(4)(B) from the information recorded in the Log: *Who, if anyone, provided necessary assistance to conclude the incident*
- e. Remove (d)(4)(C) from the information recorded in the Log: *Whether security was contacted and whether law enforcement was contacted*
- f. Remove (d)(4)(D): *Amount of lost time from work, if any*

- g. Remove (d)(5) from the information recorded in the Log: *Information about the person completing the log, including their name, job title, and the date completed*
- h. Include a statement on the Log restricting employers from including employee PII and SPII on the Log
- i. Include the month and year only on the Log
- j. Include a check box option for location of incident
- k. Include a section that identifies the severity of the incident/threat
- l. Include a case number so if regulatory agencies want to see the whole file, it will be easier to find

To understand all recommendations for the Log, please see the document: *Workplace Violence Incident Log-PRR Suggested Final* incorporates these recommendations.

Rationale for Recommendations

1. As individual data points, the information required on the Log may not be PII. However, when data points can be linked, and the information viewed in totality, the odds of and ability to identify the individuals involved in an incident increase, resulting in exposure of an employee's PII. As stated previously, workplace violence incidents tend to involve personal and sensitive events that employees want to be kept private. In these cases, any exposure of employee identity would be a direct violation of their privacy because it would meet the definition of SPII (PII if compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness of an individual.) In addition, employee awareness that their private information is subject to release to coworkers may result in some employees being unwilling to come forward to report a concern or important detail that may require employer awareness and action (e.g., that they recently obtained a restraining order against a spouse).
2. Information released about individuals could cause them personal harm and put them at risk if there is retaliation by those accused or punished for threats of violence. For example if the name of the person completing the Log is present on the Log, an employee already at a heightened emotional state may not recognize that the person completing the Log is not the one with power to take an adverse personnel action. Further, even if the violent employee has been removed from the workplace, they may continue to have allies at the work location who may report on the contents of the log, including the date, time, specific location, and the nature of the incident. Again, PRR understands DOSH's intent to require transparency; however, members believe that access to these details will cause more violence.

3. In the interest of employee safety, PRR member companies have diligently established Workplace Violence Prevention Programs that encourage and train employees to report ALL concerns they may have. PRR members believe it is crucial for DOSH to consider that if employees believe that reporting workplace violence incidents or concerns will expose them and put them at increased risk, it will be a major deterrent to reporting; this is completely counterproductive to the work that has been done and undermines the entire purpose of the standard.
4. PRR member experience is that open-ended sections on forms that require narratives significantly increase the risk of inadvertently including details of the incident that could include PII and/or sensitive information. For example, when documenting (d)(3) Nature of the incident, including whether it involved (A)-(F), the name of the employees involved and/or witnesses may be included. In the case of a workplace incident that involves domestic violence, it would be nearly impossible to describe such an incident without including details that the individuals involved would find sensitive. For this reason, PRR strongly recommends that the Log not contain sections that allow for open ended narratives and (d)(3) be removed.
5. PRR believes that it is a violation of worker privacy to release information that employees feel is private and sensitive, such as an individual's medical information and details of the injury. For example, (d)(3)(A) requires details specific to the physical attack (including biting, choking, grabbing, hair pulling, kicking, punching, slapping, pushing, pulling, scratching, or spitting) and (d)(3)(D) requires details about a sexual assault or threat (including rape/attempted rape, physical display, or unwanted verbal/physical sexual contact). Notwithstanding that (e)(3)(D) includes the most sensitive and personal type of attack a person can experience, these types of injuries have already been identified as "privacy concern cases" by OSHA in [29 CFR 1904.29\(b\)\(7\)\(i\)-\(iv\)](#) and Cal/OSHA in [14300.29](#) must be protected:
 - a) An injury or illness to an intimate body part or the reproductive system
 - b) An injury or illness resulting from sexual assault
6. PRR acknowledges that the Log in (d) of this standard does not require inclusion of the individual's name; however, members believe that some companies and employee groups are small enough that an employee's identity could easily be determined by knowing the date, time, and location of the incident. It would be easy for employees to determine who the individual is by linking the data together. For this reason, PRR suggests removing (d)(1) from the Log and including month/year only. For example, one PRR member company reported that of 276 company locations, four (4) of them have only one person assigned to them. Seventy (70) locations (including the previous four, or 29%) have five (5) or fewer employees assigned to them. Based on the small size of the operation at individual locations, it is not feasible to

protect the privacy of individuals who may be involved in an incident if the Log is shared.

7. In addition, we urge DOSH to consider the ability to identify individuals based on observable conditions. Any identification of an observable condition, or known underlying cause of an illness or injury, relatable to a single or small number of employees within an organization may result in identification of the individuals specifically associated with the information provided in (d)(3)(A) (Nature of incident) and (d)(4)(B), (Consequences of the incident) resulting in a violation of privacy. Examples of SPII that, if disclosed, could result in harm or embarrassment include: An observable symptom or applied treatment option such as a fracture or trauma resulting in bruising or treatment with a hard cast, soft cast, boot, crutches, or bandaging, could be correlated with a reported underlying injury and lead to identification of the specific employee.
8. Another example of a potential SPII violation would be employees who are not involved in the incident, learning from the Log that an individual was injured by a fellow employee and had to seek medical treatment. This could lead to the injured employee feeling embarrassment and could also lead to bullying and harassment of the co-worker accused of injuring the individual.
9. Another privacy concern regarding the sharing of this Log with other employees is the potential to determine even more information about the incident by linking the data contained on this Log with the OSHA Forms 300 and 301 which consist of additional data about worker illness and injuries. This is especially true since in many cases, the information on Form 300 is a duplication of the required Log in this standard (d)(1), (d)(3), (d)(4)(A), (d)(4)(D).
10. PRR believes that it is not necessary to include the nature of the incident on the log, as that will only put the employee at risk of privacy violations. We suggest instead including (d)(3)(A)-(F) in a definition of “workplace violence incident.” (see recommendations above for subsection (b)). This will ensure that employers and employees are aware of what a workplace violence incident actually is and protect employees from exposing sensitive and private details about incidents they have experienced on a Log that is available to other parties.
11. PRR and Dr. Dietz believe that including a severity level on the Log will provide enough detail to satisfy the need for transparency with workers, but ultimately protect individual SPII. Defining severity levels will also ensure that the Log not only addresses injuries that result from workplace violence, but addresses reports of potential for as well as threats of workplace violence. Including these details in the Log will also inform employees and their representatives that the employer did address reports of workplace violence. This goes directly to the concern expressed during Advisory Committee meetings that some employers are ignoring employee reports of workplace

violence threats and incidents and is a means to provide transparency. The only way an employer can properly label the severity of a report is after they have conducted an investigation.

12. Finally, PRR suggests including a reference to a case number that corresponds with an employer's investigation. This will document that the employer did follow up on workplace violence reports without putting the employee at risk.

In addition to the privacy and safety issues identified above in 1. – 12., PRR has additional concerns with the current text of specific sections of subsection (d); these are outlined below in Recommendations 3) – 7.

3) Recommendations for (d)(4)(A) and (d)(4)(D)

CONCERN: PRR members believe that sections of the Log required by the draft rule are redundant with OSHA's recordkeeping requirements and suggest they be removed to simplify reporting requirements.

Recommendation:

Delete (d)(4)(A) and (d)(4)(D):

~~(A) Whether medical treatment was provided to the employee;~~

~~(D) Amount of lost time from work, if any;~~

Rationale for Recommendation:

1. PRR recommends removing details about whether medical treatment was provided to the employee (d)(4)(A) and the amount of lost time from work (d)(4)(D) because both data sets will be redundant with OSHA Forms 300 and 301. Eliminating these entries will also reduce the ability for employees to determine identity (violating SPII) by linking the information contained on Forms 300 and 301 with the workplace violence incident log as stated above, especially at small companies or small establishments. It is also a redundant recordkeeping requirement (see rationale in 2 below).
2. PRR believes that the purpose and focus of the log should not be on tracking injuries resulting from workplace violence—OSHA's Form 300 already serves this purpose and PRR believes that: (a) There is no point in maintaining a workplace violence incident log that is redundant with other records employers are required to keep; (b) The purposes of a workplace violence log should be to track threats and incidents of workplace violence to aid employers in risk mitigation, to prevent workplace violence and to improve the overall Plan; and (c) Duplication of information in multiple Logs may lead to tracking and reporting inconsistencies.

4) Recommendations for (d)(4)(B)

CONCERN: PRR members are concerned that the scope of (d)(4)(B) is too broad and “who, if anyone, provided necessary assistance to conclude the incident” could apply to a number of people. In addition, it is not clear what benefit is gleaned from inclusion on the Log the names of people providing assistance, who, as potential witnesses, may be retaliated against by the offending co-worker. Most importantly, as stated throughout these comments, all individuals’ names and identifiable information must be scrubbed from these documents.

Recommendation:

Delete (d)(4)(B)

~~(B) Who, if anyone, provided necessary assistance to conclude the incident;~~

Rationale for Recommendation:

Members are not clear on which persons need to be identified as the “who,” what type of “assistance,” and what is meant by “conclude” the draft is referring to in (d)(4)(B). To illustrate the many people and situations this could apply to, members have raised the following questions:

—Is the language referring to **medical** assistance?

—Is the language referring to assistance **at the time** of the incident or **after** the incident?

—Is the language referring to fellow employees interjecting and stopping a fight, or the supervisor, security officers, or witnesses who assisted after the incident stopped?

—Is the language referring to the HR, security team, safety leader, or union representative that assisted during investigation and follow up?

The number of people that employers could or should include in response to this requirement could be extensive and open to wide interpretation. In addition, without understanding the reason why these people need to be identified, members do not see an added benefit to including their names on the Log. On the contrary, including names and details of persons involved will only pose potential risk to individuals’ privacy and safety. For these reasons, PRR suggests removing (d)(4)(B) completely.

5) Recommendation for (d)(4)(C)

CONCERN: PRR does not believe that (d)(4)(C) is relevant to the purpose of a Log and should be removed.

Recommendation:

Delete (d)(4)(C):

~~(C) Whether security was contacted and whether law enforcement was contacted;~~

Rationale for Recommendation:

PRR suggests the removal of (d)(4)(C) because we do not believe it is relevant to the purpose of the Log, which is to document that employers are directly addressing workplace violence incidents and threats. As Dr. Dietz has explained, an effective case management plan will include employer responses to workplace violence incidents that go beyond whether law enforcement or security was contacted. Also, this is the type of information that belongs in an investigation report.

6) Recommendation for (d)(4)(E)

CONCERN: PRR members are concerned about the requirement in (d)(4)(E) to include “Actions taken to protect employees from a continuing threat from any other hazards identified as a result of the incident.” They believe the language is too broad, subjective, and puts employee privacy at risk.

Recommendation:

Delete (d)(4)(E):

~~(E) Actions taken to protect employees from a continuing threat or from any other hazards identified as a result of the incident.~~

Rationale for Recommendation:

1. Traditionally “logs” are high-level documents that do not include narrative sections. “Actions taken” could be an extensive list with details that are not only outside the scope of a log but run the risk of including PII and SPII (as well as personnel actions which are always confidential).
2. The risk to employee privacy and safety from including detailed narratives about how the employer handled an incident, specifically an incident that resulted in disciplinary action is unacceptably high. PRR understands that including information about actions the employer took to mitigate and handle situations supports the intent of transparency, however, PRR believes that including these types of details will do more harm than good for workers, unless they are limited to installing what is commonly thought of as an “engineering control,” such as an alarm button for the receptionist. A requirement to include any changes made to the Workplace Violence Prevention Plan as a result of the incident would be more appropriate.

7) Recommendations for (d)(5)

CONCERN: PRR believes that ANY PII, especially names and job title on the Log presents a workplace hazard and is counter to the overall intent of the standard. For

the multiple reasons regarding potential privacy violations and safety risk of employees, (d)(5) must be removed from the list of required information on the Log.

Recommendation:

Delete (d)(5):

~~(5) Information about the person completing the log, including their name, job title, and the date completed.~~

Rationale for Recommendation:

Individuals who are involved in workplace violence incidents tend to be irrational and dangerous individuals. Presenting them an opportunity to identify anyone even remotely connected to an event that caused them harm (e.g., embarrassment, loss of job) is dangerous, regardless of the actual limited involvement of the person completing the Log.

D. Comments on Subsection (e) Training

PRR understands the need for and supports the requirement to train employees on the Workplace Violence Prevention Plan. To support this, the following are recommendations to the text of subsection (e).

1) Recommendations to (e)(1) Training

CONCERN: Many PRR members currently address workplace violence in their Injury and Illness Prevention Programs (IIPPs) or their workplace security programs and have already trained their employees on applicable hazards and procedures to follow. Subsection (e)(1) requires that “all employees shall be provided initial training...when the Plan is first established...” PRR believes that a requirement to re-train employees on current measures under the new “Plan” and not because content will be different provides no benefit to employee safety and will be costly. Members are also concerned with the time and resources it will take to develop and complete re-training for the entire employee population (one PRR member has 80,000 employees in California).

Recommended Language:

(e) Training

*(1) All employees **not previously trained** shall be provided ~~initial~~ training as described in subsection (e)(2) when the Plan is first established and when an employee is newly hired or newly assigned to perform duties for which the training required in this subsection was not previously provided.*

NOTE: When the Plan is first established, and when employees are assigned to perform duties for which the training required in this subsection was not

previously provided, employees may receive training that is limited to the differences outlined in the Plan.

Rationale for Recommendation:

Employers should be allowed to provide training courses that will benefit the safety and security of the employee and not be required to rollout a one-size fits all training program. Requiring employers to conduct “initial” training for current employees who have already received training on workplace violence will result in lost productivity and large costs. In addition, current employees have a frame of reference on workplace violence and environmental risk factors that new employees will not have. Effective training accounts for this and employers should have the flexibility to determine the content that needs to be delivered.

2) Recommendations to (e)(2)

CONCERN: PRR believes that the newly added language: “specific to the employees’ jobs” should be more concise and applicable to situations an employee may *experience*.

Recommended Language:

*(2) Initial training shall address the workplace violence hazards specific to the employee’s job **and place of employment** ...*

Rationale for Recommendation:

PRR believes that workplace violence hazards exist beyond the scope of an employees’ job and training should address the additional hazards that could result from the actual place of employment (e.g., configuration of the building, type of business and company that may not be directly related to the job tasks the employee is doing) and the activities an employee may be engaged in at the time of the incident (e.g., working in the field, traveling for business and staying overnight in hotels).

E. Comments on Subsection (f) Recordkeeping

PRR members recognize the need for recordkeeping requirements. We have the following recommendations to improve subsections (f)(4) and (f)(6).

1) Recommendations for (f)(4)

PRR recognizes that the change that DOSH made to (f)(4), specifically the deletion of “injury” and inclusion of “incident” significantly broadens the scope of the requirement to maintain records of workplace violence investigations.

CONCERN: As recommended in previous comments, PRR is concerned about the inclusion of the term “medical information” in this section and strongly suggests a revision that is much broader than “medical information,” to include any Personally

Identifiable Information (PII) or Sensitive Personally Identifiable Information (SPII). This is consistent with PRR's comment in previous sections above about PII and SPII.

Recommended Language:

(4) Records of workplace violence incident investigations...These records shall not contain ~~"medical information" as defined by Civil Code Section 56.05(j)~~ **PII and/or SPII.**

Note for DOSH: This recommendation is made with the assumption that DOSH will include the suggested definitions of PII and SPII previously suggested by PRR.

Rationale for Recommendation:

Replacing "medical information" with "PII and/or SPII" ensures the regulation is relevant to the industries that will be subject to the standard.

Civil Code Section 56.05(j) states:

*"Medical information" means any individually identifiable information, in electronic or physical form, **in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor** regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. (Emphasis added.)*

PRR recognizes that the use of Civil Code Section 56.05(j) was used in the Workplace Violence Prevention in Health Care, Section 3342, and is the basis for its inclusion in the current draft for General Industry. However, as defined, "medical information" is information "in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment." This language makes sense in Section 3342 when the employer may typically be the provider of health care, but not for industries outside of healthcare. PRR members, and most employers subject to this standard, **will not qualify as a "provider of health care"** and would therefore not be entitled to omit personally identifiable information from **any** records released.

2) Recommendations for (f)(6)

CONCERN: As stated in previous comments in this document above, PRR members are extremely concerned with the potential risk of privacy violations of both the employees involved in Type 3 and Type 4 workplace violence incidents, and employees who are witnesses to such incidents. In order to protect the privacy of these employees, PRR recommends the following clarification to (f)(6).

Recommended Language:

*(6) All records required by subsections (f)(1), ~~(f)(2)~~ and (f)(3) **related to Type 1 or Type 2 workplace violence** shall be made available to **employees with a demonstrated need to know** and their representatives, on request, for examination and copying within 15 calendar days of request.*

EXCEPTION: Investigation reports are not subject to this provision.

Rationale for Recommendation:

1. Narratives and details provided in investigation reports and incident logs may contain highly sensitive information that when disclosed may result in embarrassment, inconvenience, unfairness, or substantial harm to the employee(s) and/or witnesses involved. Both DOSH and the employer have the responsibility to protect the privacy of these individuals and ensure this regulation does not cause unnecessary risk.
2. The scope of “employees” in the current draft of (f)(6) is too broad and implies that any employee may have access to these documents (including an ally of a violent employee). As previously stated, information contained in these documents are private and sensitive and employees without a need to know should not be allowed access.
3. PRR understands, as explained by DOSH staff, that the intended scope of (f)(6) is limited to (f)(1), (f)(2), and (f)(3) and does not include investigation reports, however the language defining logs in (d) does include investigations. PRR suggests DOSH include the recommended language for [\(c\)\(11\) and \(c\)\(12\)](#) (above) in these comments to delineate between incident logs and investigation reports. Removing investigations from the definition of logs in (d) and adding the recommended EXCEPTION will help clarify the requirement for employers and reduce the risk to employee privacy.
4. Employee training records are private documents that contain PII and should not be shared with every employee of an employer. Section (f)(2) specifically requires training records to include PII (“Training records shall...include...names and job titles of all persons attending the training sessions.”); section (f)(6) requires these records to be “made available to employees and their representatives.” The standard definition of PII includes names of individuals and the sharing of these documents, without consent from the individual, is a violation of an individual’s PII. Employees should have access to their own

training records, but random employees should not. Of course, training content and materials should be made available to employees upon request.

Additional Considerations

This new standard includes additional recordkeeping requirements that will trigger creating and/or modifying databases and electronic systems. In some cases, an entire company-wide program will need to be generated. PRR members therefore request sufficient lead time to implement these new programs, processes, and systems, and changes to existing ones.

Summary

We sincerely hope that we have been successful in conveying to DOSH that PRR supports the intent of this standard and is fully aligned with the goal of protecting employees from violence in the workplace. We also hope that it is clear that balancing the need for transparency with protecting workers from unnecessary harm that could result from retaliation for reporting and exposing PII and SPII should be at the forefront in developing this standard. In closing, we offer the compelling explanation of our concern as explained by Dr. Park Dietz:

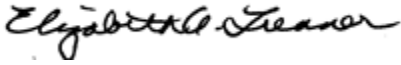
“The most dangerous aspect of the draft regulation is that it would provide a tool for vindictive and unreasonably aggrieved parties to retaliate against those they blame for reporting them or taking adverse employment action against them. Individuals who are disciplined for workplace misconduct, including threats and violence, have unusually high rates of vindictiveness, blaming, projection of blame onto inappropriate targets, retaliation, and revenge. Any step that would give such people greater ability to identify a person, department, or organization on which to attach blame will certainly cause injury and death.

The most sophisticated programs of workplace violence prevention take great pains to protect the identity of reporting parties and to ensure that the subject of an investigation learns only that the investigation revealed a policy violation that is the basis of the disciplinary action. If knowledge of the most serious policy violation (such as a death threat) would jeopardize the safety of the reporting party, the basis for discipline may be another policy violation, such as submitting fraudulent expense reports, lying on the employment application, or other misconduct.

Aggrieved parties have other routes through which to learn why they were disciplined, including the processes permitted by some employers for appeals or for arbitrating employment disputes or use of the civil discovery process in employment litigation. Cal/OSHA should not give them a new back door through which to obtain information from a friend that can be used to track down and kill the reporting party or people perceived to have been the decision-makers.”

Thank you for the opportunity to submit these comments and recommendations. We look forward to continued participation in this important process.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Treanor". The script is cursive and fluid.

Elizabeth Treanor
Director
Phylmar Regulatory Roundtable – OSH Forum

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